



Billing Code:
Federal Reserve 6210-01-P
FinCEN 4810-02-P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Part 1010

RIN 1506-AB20

Definitions of Transmittal of Funds and Funds Transfer

AGENCY: Financial Crimes Enforcement Network (“FinCEN”), Department of the Treasury; Board of Governors of the Federal Reserve System (“Board”).

ACTION: Final Rule.

SUMMARY: The Financial Crimes Enforcement Network, a bureau of the Department of the Treasury, and the Board of Governors of the Federal Reserve System are issuing this Final Rule amending the regulatory definitions of “funds transfer” and “transmittal of funds” under the regulations implementing the Bank Secrecy Act (“BSA”). We are amending the definitions to maintain their current scope in light of changes to the Electronic Fund Transfer Act, which will avoid certain currently covered transactions being excluded from BSA requirements.

DATES: *Effective Date:* This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:

FinCEN: The FinCEN Resource Center at (800) 949-2732.

Board: Koko Ives, Manager, BSA/AML Compliance Section, (202) 973-6163, Division of Banking Supervision and Regulation, or Clinton Chen, Attorney, (202) 452-3952,

Legal Division. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Statutory Provisions

The Currency and Foreign Transactions Reporting Act of 1970, as amended by the USA PATRIOT Act of 2001 and other legislation, which legislative framework is commonly referred to as the “BSA,”¹ authorizes the Secretary of the Treasury (“Secretary”) to require financial institutions to keep records and file reports that “have a high degree of usefulness in criminal, tax, or regulatory proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.”² The Secretary has delegated to the Director of FinCEN the authority to implement, administer, and enforce compliance with the BSA and associated regulations.³

The BSA was amended by the Annunzio-Wylie Anti-Money Laundering Act of 1992 (Pub. L. 102-550) (“Annunzio-Wylie”). Annunzio-Wylie authorizes the Secretary and the Board to issue joint regulations requiring insured banks to maintain records of domestic funds transfers.⁴ In addition, Annunzio-Wylie authorizes the Secretary and the Board to issue joint regulations requiring insured banks and certain nonbank financial

¹ The BSA is codified at 12 U.S.C. 1829b and 1951–1959, 18 U.S.C. 1956, 1957, and 1960, and 31 U.S.C. 5311–5314 and 5316–5332 and notes thereto, with implementing regulations at 31 CFR Chapter X. *See* 31 CFR 1010.100(e).

² 31 U.S.C. 5311.

³ Treasury Order 180-01 (Sept. 26, 2002).

⁴ 12 U.S.C. 1829b(b)(2) (2006). Treasury has independent authority to issue regulations requiring nonbank financial institutions to maintain records of domestic transmittals of funds.

institutions to maintain records of international funds transfers and transmittals of funds.⁵ Annunzio-Wylie requires the Secretary and the Board, in issuing regulations for international funds transfers and transmittals of funds, to consider the usefulness of the records in criminal, tax, or regulatory investigations or proceedings, and the effect of the regulations on the cost and efficiency of the payments system.⁶

The Electronic Fund Transfer Act (“EFTA”)⁷ was enacted in 1978 to establish the rights and liabilities of consumers as well as the responsibilities of all participants in electronic fund transfer activities. The EFTA is implemented by Regulation E, which sets up the framework that establishes the rights, liabilities, and responsibilities of participants in electronic fund transfer systems.⁸ Section 1073 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”),⁹ added a new section 919 to the EFTA, creating a comprehensive new system of consumer protections for remittance transfers sent by consumers in the United States to individuals and businesses in foreign countries. Because the new section 919 of the EFTA defines “remittance transfers” broadly, most electronic transfers of funds sent by consumers in the United States to recipients in other countries will be subject to the new protections.

⁵ 12 U.S.C.1829b(b)(3) (2006).

⁶ *Id.* As discussed later in this *Federal Register* notice, the final rule would have no effect on the current scope of or substantive requirements in BSA regulations and thus no effect on the cost or efficiency of the payment systems.

⁷ 15 U.S.C. 1693 *et seq.*

⁸ 12 CFR part 1005.

⁹ Pub. L. 111-203, 124 Stat. 1376, section 1073 (2010).

II. Background Information

A. Current Regulations Regarding Funds Transfers and Transmittals of Funds

On January 3, 1995, FinCEN and the Board jointly issued a rule that requires banks and nonbank financial institutions to collect and retain information on certain funds transfers and transmittals of funds (“recordkeeping rule”).¹⁰ At the same time, FinCEN issued the “travel rule,” which requires banks and nonbank financial institutions to include certain information on funds transfers and transmittals of funds sent to other banks or nonbank financial institutions.¹¹

The recordkeeping and travel rules provide uniform recordkeeping and transmittal requirements for financial institutions and are intended to help law enforcement and regulatory authorities detect, investigate, and prosecute money laundering and other financial crimes by preserving an information trail about persons sending and receiving funds through the funds transfer system.

In general, the recordkeeping rule requires financial institutions to retain information on transmittals of funds of \$3,000 or more and requires banks to retain information on funds transfers of \$3,000 or more. Under the recordkeeping rule, a financial institution must retain the following information for transmittals of funds of \$3,000 or more:

¹⁰ 31 CFR 1020.410(a) (recordkeeping requirements for banks); 31 CFR 1010.410(e) (recordkeeping requirements for nonbank financial institutions). The Board revised its Regulation S (12 CFR part 219) to incorporate by reference the recordkeeping rule codified in Title 31 of the CFR, as well as to impose a five-year record-retention requirement with respect to the recordkeeping and reporting requirements.

¹¹ 31 CFR 1010.410(f).

- If acting as a transmittor's financial institution, either the original, microfilmed, copied, or electronic record of the following information: (a) the name and address of the transmittor; (b) the amount of the transmittal order; (c) the execution date of the transmittal order; (d) any payment instructions received from the transmittor with the transmittal order; (e) the identity of the recipient's financial institution; (f) as many of the following items as are received with the transmittal order: the name and address of the recipient, the account number of the recipient, and any other specific identifier of the recipient; and (g) if the transmittor's financial institution is a nonbank financial institution, any form relating to the transmittal of funds that is completed or signed by the person placing the transmittal order.¹²
- If acting as an intermediary financial institution, or a recipient financial institution, either the original, microfilmed, copied, or electronic record of the received transmittal order.¹³

Banks are required to maintain analogous information for funds transfers of \$3,000 or more, but the rule uses different terminology to describe the parties.¹⁴ The recordkeeping rule requires that the data be retrievable.¹⁵ Records required to be retained by the recordkeeping rule must be made available to Treasury or the Board upon request.¹⁶

¹² 31 CFR 1010.410(e)(1)(i).

¹³ 31 CFR 1010.410(e)(1)(ii) and (iii).

¹⁴ 31 CFR 1020.410(a).

¹⁵ 31 CFR 1010.410(e)(4).

¹⁶ 12 U.S.C. 1829b(b)(3)(C); 12 CFR 219.24.

Under the travel rule, a financial institution acting as the transmitter's financial institution must obtain and include in the transmittal order the following information on transmittals of funds of \$3,000 or more: (a) name and, if the payment is ordered from an account, the account number of the transmitter; (b) the address of the transmitter; (c) the amount of the transmittal order; (d) the execution date of the transmittal order; (e) the identity of the recipient's financial institution; (f) as many of the following items as are received with the transmittal order: the name and address of the recipient, the account number of the recipient, and any other specific identifier of the recipient; and (g) either the name and address or the numerical identifier of the transmitter's financial institution. A financial institution acting as an intermediary financial institution must include in its respective transmittal order the same data points listed above, if received from the sender.¹⁷

The recordkeeping rule and the travel rule apply to transmittals of funds and funds transfers. A "transmittal of funds" is defined as a series of transactions beginning with the transmitter's transmittal order, made for the purpose of making payment to the recipient of the order (31 CFR 1010.100(ddd)). The term includes any transmittal order issued by the transmitter's financial institution or an intermediary financial institution intended to carry out the transmitter's transmittal order. The term transmittal of funds includes a funds transfer. A "funds transfer" is a series of transactions beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order (31 CFR 1010.100(w)). The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment

¹⁷ 31 CFR 1010.410(f)(1)-(2).

order. Under the current definitions, transmittals of funds and funds transfers governed by the EFTA, as well as any other funds transfers that are effected through an automated clearinghouse, an automated teller machine (“ATM”), or a point-of-sale system, are excluded from the definitions of “transmittal of funds” and “funds transfer” under the BSA.

When the recordkeeping and travel rules were adopted, the EFTA governed only electronic funds transfers as defined in section 903(a)(7) of that Act. The term “electronic fund transfer” includes any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer’s account (including a payroll card account). The term includes, but is not limited to, (a) point-of-sale transfers; (b) ATM transactions; (c) direct deposits or withdrawals of funds; (d) transfers initiated by phone as part of a bill-payment plan; and (e) transfers resulting from debit card transactions, whether or not initiated through an electronic terminal. The term does not include certain transfers of funds, such as those originated by check, draft, or similar paper instrument; those issued as a means of guaranteeing the payment or authorizing the acceptance of a check, draft, or similar paper instrument; or those made in the context of a purchase or sale of certain securities or commodities.¹⁸ Wire or other similar transfers conducted through Fedwire[®] or similar wire transfer systems primarily used for transfers between financial institutions or between businesses are also specifically excluded from the definition of “electronic fund transfer.”

¹⁸ 15 U.S.C. 1693a(7); 12 CFR 1005.3(b).

B. Section 1073 of the Dodd-Frank Act and the EFTA

Section 1073 of the Dodd-Frank Act, signed into law on July 21, 2010, added a new Section 919 to the EFTA, creating new protections for consumers who send remittance transfers. Authority to implement the EFTA (except for the interchange fee provisions in EFTA section 920) transferred from the Board to the Consumer Financial Protection Bureau (“CFPB”) effective July 21, 2011. On February 7, 2012, CFPB adopted a final rule to implement Section 919, with an original effective date of February 7, 2013, which was later postponed to October 28, 2013.¹⁹ The provisions of the final rule will apply to any “remittance transfer,” which is defined as the electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider. The term applies regardless of whether the sender holds an account with the remittance transfer provider, and regardless of whether the transaction is also an electronic fund transfer. However, certain small dollar and securities- or commodities-related transfers are excluded from the definition of remittance transfer.²⁰ A “sender” is a consumer in a State who, primarily for personal, family, or household purposes, requests a remittance transfer provider to send a remittance transfer to a designated recipient.²¹ A “designated recipient” is any person specified by the sender as the authorized recipient of a remittance transfer to be received at a location in a foreign country.²² A “remittance transfer provider” or “provider” is any person that provides remittance transfers for a

¹⁹ 77 FR 6193 (Feb. 7, 2012). On December 31, 2012, the CFPB requested comment on proposed revisions to its remittance amendments to Regulation E. 77 FR 77188 (Dec. 31, 2012). On January 22, 2013, the CFPB issued a final rule that temporarily delays the effective date of their revisions to Regulation E, 78 FR 6025 (Jan. 29, 2013). The CFPB finalized its December 31, 2012 proposal on April 30, 2013, with an effective date of October 28, 2013 (78 FR 30662, May 22, 2013).

²⁰ 12 CFR 1005.30(e).

²¹ 12 CFR 1005.30(g).

²² 12 CFR 1005.30(c).

consumer in the normal course of its business, regardless of whether the consumer holds an account with such person.²³ Once effective, the provisions will extend the coverage of section 919 of the EFTA, as implemented by Regulation E, to transactions that were excluded from other portions of the EFTA and Regulation E, such as international wire transfers sent by consumers through banks, and cash-based transmittals of funds sent by a consumer through money transmitters.

C. Effect of changes to the EFTA and Regulation E on the scope of the definitions of “transmittal of funds” and “funds transfer” under the regulations implementing the BSA

Existing BSA regulations exclude certain types of transactions and payment systems that are used mostly for domestic retail transactions and payments from the definitions of funds transfer and transmittal of funds. This exclusion was implemented, not by listing the individual transaction types, but by referencing the law that protected the consumers engaged in such transactions, namely the EFTA, and the specific payment systems through which such transactions are conducted, namely ATM, point-of-sale, and automated clearinghouse transactions. This method of identifying excluded transactions created a link between the two statutes (and their implementing regulations) with very different goals. The BSA requires financial institutions to keep records and file reports on transmittals of funds and funds transfers (which could be either domestic or international, consumer- or business-related, retail or wholesale, cash-based or account-based) that the Secretary and the Board determine have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in intelligence or

²³ 12 CFR 1005.30(f).

counterintelligence matters to protect against domestic and international terrorism.²⁴ The EFTA, as originally adopted, protects individual consumers engaging in certain movements of funds initiated through electronic means (e.g., electronic terminal, telephone, computer, online banking, magnetic tape, etc.) for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer's account. In spite of the different statutory purposes, for many years this approach to identifying excluded transactions was satisfactory, as the types of transactions covered by the EFTA conformed to the profile of the types of transactions that were appropriate to exclude from the recordkeeping and travel requirements under the BSA.

However, the recent amendments to the EFTA and the recently finalized revisions to Regulation E, which will become effective October 28, 2013, would result in an expanded scope of the transactions subject to the EFTA's remittance provisions. Some of these transactions have, to date, been covered by the regulations implementing the BSA. When the changes to Regulation E become effective, these transactions, which include international funds transfers sent by consumers through banks and cash- or account-based transmittals of funds sent by consumers through money transmitters, would fall outside the BSA rules' definitions of "funds transfer" and "transmittal of funds" (31 CFR 1010.100(w) and 1010.100(ddd)).

III. Notice of Proposed Rulemaking, Analysis of Comments, and Final Rule

To avoid the aforementioned reduction in the scope of transactions subject to the BSA, on December 6, 2012, the Board and FinCEN issued a Notice of Proposed Rulemaking ("NPRM") to solicit comments on revising the regulations implementing the

²⁴ 31 USC 5311; 12 USC 1829b and 1953(a).

BSA by narrowing the exclusion from the definitions of “funds transfer” and “transmittal of funds.”²⁵ The proposed revision would replace the general reference to the EFTA contained in the exception to the definitions of “transmittal of funds” and “funds transfer,” by a more specific reference to section 903(7) of the EFTA, the section of the EFTA containing the definition of “electronic fund transfers,” which are the transactions that are currently excluded from the recordkeeping and travel rules. Any remittance transfers that are covered by section 919 of the EFTA, but do not meet the definition of electronic fund transfer under section 903(7) of that statute, would continue to be covered by the travel and recordkeeping rules.

The comment period ended on January 25, 2013. The Board and FinCEN received eight comment letters from individuals and representatives of various groups whose members had an interest in the amendment to the definitions. One letter contained observations regarding the implementation of CFPB’s remittance transfer rule and was therefore out of the scope of the comments requested by the NPRM. The remaining comments were uniformly supportive of the purpose of the amendment and generally supportive of the proposed approach to implementing it.

Five commenters requested that the Board and FinCEN clearly state in the Final Rule that the proposed amendment does not change the current scope of the obligations of financial institutions under the recordkeeping and travel rules. As noted in the preamble to the proposal, the purpose of the Final Rule is to maintain the recordkeeping and reporting status quo existing before the EFTA amendments. Nothing in this Final

²⁵ 77 FR 72783 (Dec. 6, 2012).

Rule modifies the current scope of the obligation of any financial institution under the recordkeeping and travel rules.

One commenter encouraged the Board and FinCEN to delay finalizing the proposed amendment until CFPB's remittance transfer rule itself is finalized and effective, to ensure any further change to its provisions does not inadvertently cause additional changes to the current scope of transactions subject to the BSA. On April 30, 2013, CFPB finalized its remittance transfer rule with an effective date of October 28, 2013. The Board and FinCEN have concluded that the changes to the remittance transfer provisions in Regulation E under the CFPB's final remittance rule will not have any impact on section 903(7) of the EFTA, and therefore there is no need to revise the proposed amendments to the recordkeeping and travel rule.

Finally, another commenter suggested that the Board and FinCEN consider incorporating the statutory language of section 903(7) of the EFTA into the regulatory definitions, without cross-referencing the EFTA statute, to prevent the need for further amendments should Congress make changes to the EFTA statute in the future. The statutory definition of "electronic fund transfer" includes terms that are defined elsewhere in the EFTA, which also would have to be incorporated into the recordkeeping and travel rules. Moreover, future changes to the statutory definition of "electronic fund transfer" could be changes the Board and FinCEN would want to incorporate into the recordkeeping and travel rules. Accordingly, the Board and FinCEN are adopting the amendments to the definitions of "funds transfer" and "transmittal of funds" as proposed.

IV. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that this final rule is neither an economically significant regulatory action nor a significant regulatory action for purposes of Executive Orders 12866 and 13563.

V. Unfunded Mandates Act of 1995 Statement

Section 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), Public Law 104-4 (March 22, 1995), requires that an agency prepare a budgetary impact statement before promulgating a rule that may result in expenditure by the State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 202 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. Since there is no change to the requirements imposed under existing regulations, FinCEN has determined that it is not required to prepare a written statement under section 202.

VI. Regulatory Flexibility Act

FinCEN

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires that a regulation that has a significant economic impact on a substantial number of small entities, small

businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)). These changes are not intended to alter any institution's existing obligations. The sole purpose of these amendments is to maintain the current scope of transactions subject to the BSA funds transfer recordkeeping and travel rules, in light of changes to the EFTA. Accordingly, FinCEN hereby certifies that the amended regulation is not likely to have a significant economic impact on a substantial number of small business entities for purposes of the Regulatory Flexibility Act.

Board

An initial regulatory flexibility analysis ("IRFA") was included in the proposal in accordance with Section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* ("RFA"). In the IRFA, the Board requested comment on all aspects of the IRFA, and, in particular, whether any alternative approaches would reduce the burden on all entities, including small entities.

The RFA requires an agency either to provide a final regulatory flexibility analysis or certify that the final rule will not have a significant impact on a substantial number of small entities. The final rule covers insured banks and certain nonbank financial institutions that are engaged in funds transfers and transmittals of funds. The Board believes it is unlikely that the final rule will have a significant economic impact on a substantial number of small entities. Nonetheless, the Board has prepared a final regulatory flexibility analysis pursuant to the RFA.

1. *Statement of the need for and objectives of the final rule.* The Dodd-Frank Act's amendments to the EFTA expanded the types of transactions that are covered by the EFTA, thereby excluding them from the definition of funds transfer and transmittal of funds in 31 CFR 1010.100(w) and 31 CFR 1010.100(ddd), respectively. This final rule is necessary to retain the current scope of transactions subject to the recordkeeping rule.

2. *Summary of significant issues raised by public comment on the Board's initial analysis of issues, and a statement of any changes made as a result.* The Board did not receive any comments on the proposed rule addressing matters relating to the Board's initial regulatory flexibility analysis.

3. *Small entities affected by the final rule.* The requirements of this final rule, like the existing requirements, apply to all financial institutions subject to the Bank Secrecy Act, regardless of size. Based on Call Report data as of December 31, 2012, approximately 3,660 insured depository institutions had total domestic assets of \$175 million or less.²⁶ In addition, the requirements of this final rule will affect financial institutions that are not "insured depository institutions" under the Federal Depositary Insurance Act. For example, as of December 31, 2012, approximately 5,970 credit unions had total domestic assets of \$175 million or less.

4. *Compliance requirements.* The final rule, like the current regulation, requires insured depository institutions and nonbank financial institutions to collect and retain information on funds transfers and transmittals of funds. The final rule does not change the scope of the information currently required to be collected or retained and does not

²⁶ U.S. Small Business Administration. Table of Small Business Size Standards Matched to North American Industry Classification System Codes, available at http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.

change the funds transfers and transmittals of funds for which the information currently must be collected and maintained.

5. *Other Federal rules.* The Board has not identified any Federal rules that duplicate, overlap, or conflict with the final rule.

6. *Significant alternatives to the proposed regulation.* The Board did not receive any comments on any significant alternatives that would minimize the impact of the proposal on small entities.

VII. Paperwork Reduction Act

The collection of information requirements have been reviewed and approved by the Office of Management and Budget (“OMB”) under section 3507 of the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3507(d). (OMB Control No. 1506-0058 (recordkeeping requirements for financial institutions under § 1010.410(e) and (f)) and 1506-0059 (recordkeeping requirements for banks under § 1020.410(a)). Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. These amendments maintain the same scope of transactions subject to the requirements of the recordkeeping and travel rules as existed prior to this rulemaking. With no change to the types or scope of transactions covered under the regulations, there is no impact on the burden estimates already approved under the requirements of the PRA.

List of Subjects in 31 CFR Part 1010

Authority delegations (Government agencies), Banks and banking, Currency, Investigations, Law enforcement, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, 31 CFR part 1010 is amended as follows:

PART 1010—GENERAL PROVISIONS

1. The authority citation for part 1010 continues to read as follows:

Authority: 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314, 5316–5332; title III, secs. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307.

2. Section 1010.100 is amended by:

a. Revising the last sentence of paragraph (w), and

b. Revising the last sentence of paragraph (ddd) to read as follows:

§ 1010.100 General definitions.

* * * * *

(w) *Funds transfer.* * * * Electronic fund transfers as defined in section 903(7) of the Electronic Fund Transfer Act (15 U.S.C. 1693a(7)), as well as any other funds transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.

* * * * *

(ddd) *Transmittal of funds.* * * * Electronic fund transfers as defined in section 903(7) of the Electronic Fund Transfer Act (15 U.S.C. 1693a(7)), as well as any other funds

transfers that are made through an automated clearinghouse, an automated teller machine, or a point-of-sale system, are excluded from this definition.

* * * * *

In concurrence:

By order of the Board of Governors of the Federal Reserve System, November 13, 2013.

Margaret McCloskey Shanks
Deputy Secretary of the Board

Jennifer Shasky Calvery
Director, Financial Crimes Enforcement Network
November 14, 2013

[FR Doc. 2013-28951 Filed 12/03/2013 at 8:45 am; Publication Date: 12/04/2013]